Supreme Court, U.S.
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No. 04-222

In the Supreme Court of the United States

DASSAULT AVIATION,

Petitioner,

v.

BEVERLY ANDERSON,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

SUPPLEMENTAL BRIEF FOR PETITIONER

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SUPPLEMENTAL BRIEF FOR PETITIONER

Pursuant to Rule 15.8 of the Rules of this Court, petitioner Dassault Aviation submits this brief to call the Court's attention to a recent decision of the district court in this case on remand from the Eighth Circuit. A copy of the district court's opinion and order is reproduced in the addendum to this brief. Add. 1a-11a (per Wright, C.J.).

On November 16, 2004, the district court ruled that Michigan substantive law applies to respondent Anderson's claims against petitioner. The district court's opinion is relevant in several respects to the issues raised in the petition for a writ of certiorari.

1. As explained in our reply brief (at 2-3), respondent is simply wrong to characterize the Eighth Circuit's decision as not having ruled on the attribution issue. See also Pet. 6, 12, 15. Chief Judge Wright reads the Eighth Circuit's opinion the same way we do. See Add. 5a (noting that court of appeals rejected the principle "that the forum contacts of a subsidiary corporation *may not be used to find personal jurisdiction* over its nonresident parent company unless there is a basis for piercing the corporate veil") (emphasis added).

2. Chief Judge Wright also agrees with us (Pet. 7, 15; Reply Br. 4 & n.2) and with the *amici* (Br. 5, 9-10) that the Eighth Circuit applied a "synergistic relationship" test in deciding that attribution of Falcon Jet's Arkansas contacts to petitioner was appropriate. See Add. 5a ("the panel * * * found that * * * 'common sense' dictated that the 'close, synergistic relationship' * * * was such that jurisdiction over Dassault Aviation in this Court 'would be reasonable and fair'") (quoting Pet. App. 5a, 9a). Compare Opp. 18 ("The 'close, symbiotic relationship test' is a misleading and fantastical invention of the Petitioner.").

3. As explained in the petition (at 7, 15), the Eighth Circuit's decision leaves untouched the district court's finding that Falcon Jet is *not* petitioner's alter ego and that veil-piercing is

impermissible on this record. Chief Judge Wright agrees. See Add. 5a, 8a (taking note of Eighth Circuit's statement that petitioner's relationship with its subsidiary was "'not an abuse of the corporate organizational form'" and concluding that court of appeals accordingly "did not disturb" the district court's previous finding that the requirements of the "alter ego" doctrine could not be satisfied) (quoting Pet. App. 5a). Thus, Chief Judge Wright's opinion confirms that this case is an especially clean vehicle for resolving the first question presented in the petition.

4. The district court's recent decision also confirms that, contrary to respondent's contention (see Opp. 21-23), specific jurisdiction cannot be asserted in this case because respondent's claims do not "arise out of" any contacts of petitioner with Arkansas. See Reply Br. 8-9. As Chief Judge Wright explained in the course of resolving the choice-of-law issue:

> *[N]othing* of relevance to this action is alleged to have occurred in Arkansas. * * * Anderson is a Michigan resident, the accident occurred in Michigan, the flight in question originated in Michigan, and the aircraft was owned by Anderson's employer, a Michigan Corporation. In addition, * * * the design and manufacture of the subject aircraft and the Honeywell autopilot at issue *had no connection to Arkansas*.
>
> The only "contact" that Arkansas has to the litigation is that Dassault Aviation's subsidiary – Dassault Falcon Jet – operates a large completion center and service base in the state. However, the mere fact that the subject aircraft may have been painted and customized in Arkansas *by Dassault Falcon Jet* where it was then sold to Anderson's Michigan employer some years prior to the accident is not, for purposes of interstate and international order, so significant a contact *on the part of Dassault Aviation*, which had passed title to the aircraft in France prior to its entry into Arkansas, that Michigan law should be trumped in favor of Arkansas law.

Add. 7a-8a (emphasis altered) (footnote omitted).

5. As part of its choice-of-law analysis, the district court ruled that "Arkansas's governmental interests in this matter are slight." Add. 9a. Chief Judge Wright acknowledged that the Eighth Circuit, in conducting the personal jurisdiction analysis, had "stated that 'Arkansas has a substantial interest in the matter to be litigated, as the safety of Falcon jets affects the state's consumers and workers who encounter Dassault Aviation's products.'" *Ibid.* (quoting Pet. App. 9a). But "[t]hese statements," she noted, "did [not] address Arkansas' choice of law considerations." Add. 10a. She added:

> [A]pplying the Eighth Circuit's statements in this choice of law context would mean that Arkansas would have an interest in having its law apply to every accident involving a Dassault Aviation aircraft that was at some point painted and customized in Arkansas – no matter where in the world such an accident might occur – simply because of the presence in Arkansas of Dassault Aviation's wholly owned subsidiary.

Ibid. "[S]urely," Chief Judge Wright observed, the Eighth Circuit "could not have intended such a far reaching pronouncement as to choice of law." *Ibid.*

Precisely the same criticism, of course, could be leveled at the Eighth Circuit's rationale underlying its personal jurisdiction holding. Moreover, as we explained in our reply, respondent's novel variant of the "stream of commerce" theory suffers from the same critical flaw identified by Chief Judge Wright. See Reply Br. 8 n.4 ("Under respondent's view, 'stream of commerce' jurisdiction could be exercised in any State through which a manufacturer's product (or other products like it) passed, however transitorily, even if the product ultimately caused an injury half way around the world to a non-U.S. citizen. That cannot be right.").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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